



HF 2390 – Child Pornography (LSB 5149HV)

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Fiscal Note Version – New

Description

House File 2390 expands the definition of human trafficking and the definition of obscenity. The Bill specifies that a person's ignorance of the age of the victim is no defense against a human trafficking charge. The Bill creates and defines a new offense, solicitation of commercial sexual activity. Offenders convicted of the new offense are guilty of a Class "D" felony and are subject to requirements of the Sex Offender Registry (SOR) for at least 10 years. House File 2390 requires victims of commercial sexual activity that are under age 18 to be eligible for victim compensation. The Bill broadens the definition of obscenity to include the term "visual depiction" in the offense of sexual exploitation of a minor.

Background

Correctional and Fiscal Information

1. Current law provides a graduated system of penalties for human trafficking, ranging from a Class "D" to a Class "B" felony. A conviction for enticing a minor ranges from an aggravated misdemeanor to a Class "C" felony. Convictions under Iowa Code chapter [728](#) range from a simple misdemeanor to a Class "C" felony, depending upon the specific crime and circumstances of the offense. Offenders charged under these chapters may plead to a lesser offense and be convicted of a Class "D" felony or an aggravated misdemeanor.
2. There are currently two offenders in prison convicted of human trafficking; one is convicted of a Class "B" offense and the other has two Class "C" felony convictions.
3. The Bill includes law enforcement officers or agents representing themselves to be under age 18 with penalties matching offenses committed with actual victims, for solicitation of commercial sexual activity. According to the Iowa Corrections Offender Network (ICON), 78.6% of offenders admitted to probation or prison involved law enforcement officers or agents representing themselves to be minors.
4. According to the **National Human Trafficking Hotline**, there were 21 total tip and crisis calls and 161 hotline calls for Iowa related to antilabor or antisex trafficking combined. This is approximately 46 cases per year. The reporting period is from December 2007 through February 2012.
5. Sex offenders supervised by Community-Based Corrections may be required to wear an electronic monitoring device. Sex offenders are subject to requirements of the SOR for at least 10 years. The SOR is administered by the Department of Public Safety (DPS).
6. The marginal cost per day for prison is \$15.59. The average cost per day for intensive supervision is \$7.78 and \$3.49 for probation or parole supervision. The average length of stay on intensive supervision for sex offenders is 460 days. The cost per day for Global

Positioning System electronic monitoring is \$5.50. The average length of stay for sex offenders on electronic monitoring is 352 days.

7. According to the Justice Data Warehouse, the State Public Defender’s Office, the Judicial Branch, the Department of Corrections, and the Criminal and Juvenile Justice Division of the Department of Human Rights, the following are estimated sentencing dispositions, length of stay, indigent defense costs, and court case costs for those convicted of Class “D” felonies and aggravated misdemeanors for crimes against persons and sex offenses.

Criminal Justice System Information

Offense Class	Percent Sentenced to Prison	Avg Length of Stay in Prison	Percent Sentenced to Probation	Avg Length of Stay on Probation	Avg Length of Stay on Parole	Special Sentence of 10 Yrs After Discharge of Original Sentence	Sex Offender Registry for 10 years	Cost of Indigent Defense	Avg cost per case for Judicial Branch
Class D Chapter 710 Offenses	40.0%	36.8 months	60.0%	30.8 months	13.7 months	No	Yes	\$1,200	\$2,500
Aggravated Misdemeanor Chapter 710 Offenses (*)	9.4%	13.5 months	53.1%	18.1 months	5.3 months	No	Yes	\$1,200	\$1,000
Aggravated Misdemeanor Chapter 728 Offenses	0.0%	NA	100.0%	18.1 months	5.3 months	Yes	Yes	\$1,200	\$1,000

*Approximately 21.9% are sentenced to county jail for an average length of stay of 43 days.

Minority Data Information

- Both of the offenders currently in prison for human trafficking are black.
- The majority of offenders (85.7%) convicted of obscenity charges are white.

Assumptions

Correctional and Fiscal Information

- Charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, and other criminal justice policies and practices will not change over the projection period.
- The law will become effective July 1, 2012. A lag effect of six months is assumed from the effective date to the date of first entry of affected offenders into the correctional system.
- All offenders will be placed on intensive supervision and electronic monitoring when they first enter probation or parole supervision.
- Broadening the definition of a crime increases the likelihood of convictions. Half of the offenders will be indigent. All trials will be by jury.
- There will be an estimated 56 cases annually for the human trafficking provisions of the Bill. Of these, 61.1% will be dismissed or acquitted, 16.7% (9) will be convicted as charged, and 22.2% (12) will be convicted of other charges.
- There will be an estimated 20 cases annually for the obscenity provisions of the Bill. Of these, 80.0% will be dismissed or acquitted while 20.0% (4) will be convicted as charged.

To the extent prosecutors file separate charges for each visual depiction of obscenity, the correctional and fiscal impact may be understated in this fiscal note.

- There will be an increase in county jail sentences for misdemeanor convictions. Marginal costs for county jails cannot be determined due to a lack of data. For the purpose of this analysis, the marginal cost for county jails is \$15.00 per day.
- The costs to the Crime Victim Compensation Fund will not be significant.

Minority Data Information

- The impact on minorities will remain consistent with current practice.
- Approximately 14.0% of Iowa’s population has at least one disability. The number of disabled offenders convicted under this Bill may be 14.0%.

Summary of Impacts

Correctional Impact

The table below shows the annual convictions under this Bill. These will be new offenders in the criminal justice system.

Annual Convictions by Crime and Offense Class

	# of Offenders Convicted	Prison	Probation	Jail
Human Trafficking				
Class "D" Felony	9	4	5	0
Aggravated Misdemeanor	12	1	6	3
Obscenity				
Aggravated Misdemeanor	4	0	4	0

There will be an estimated two offenders sentenced to prison in FY 2013 and five annually thereafter. The prison population will increase by three offenders in FY 2013, seven offenders in FY 2014, and eight annually thereafter. The population increase exceeds admissions because the average length of stay per offender exceeds three years.

There will be seven offenders sentenced to probation in FY 2013 and 15 offenders annually thereafter. The probation population will increase by eight offenders in FY 2013, 15 offenders in FY 2014, and 11 offenders annually for each of the three succeeding fiscal years.

There will be one offender sentenced to county jail in FY 2013 and three offenders each succeeding fiscal year. The average length of stay is 43 days so the county jail populations are not expected to significantly increase.

Minority Impact

Approximately 50.0% of the offenders convicted under the Bill's human trafficking provisions may be black. Approximately 85.7% of the offenders convicted under the Bill's obscenity provisions may be white.

Fiscal Impact

The fiscal impact is estimated to be an increased cost to the State General Fund of \$37,400 in FY 2013 and \$171,900 in FY 2014. The table below shows the impact by areas within the State criminal justice system. Costs will continue to increase in future fiscal years because the length of stay in the corrections system exceeds one year.

	FY 2013	FY 2014
Court System	\$7,500	\$22,500
Indigent Defense	7,200	8,400
Prison	5,700	40,000
CBC	17,000	101,000
Total	<u>\$37,400</u>	<u>\$171,900</u>

The impact on county budgets for jail operations is expected to be minimal. Any correctional or fiscal impact is expected to be minimal for violations of the SOR requirements under this Bill and the fiscal impact to the DPS for administering the SOR under this Bill is not anticipated to be significant.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
State Public Defender's Office

/s/ Holly M. Lyons

March 7, 2012

The fiscal note for this bill was prepared pursuant to **Joint Rule 17** and the correctional and minority impact statements were prepared pursuant to **Section 2.56, Code of Iowa**. Data used in developing this fiscal note, including correctional and minority impact information, is available from the Fiscal Services Division of the Legislative Services Agency upon request.
